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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF COCONINO**

10 STATE OF ARIZONA,

11 Plaintiff,

12 vs.

13 JAMES JOSHUA WOMBLE,

14 Defendant.

No. CR2017-00886

**MOTION TO AMEND DIRECT
COMPLAINT**

(PROPOSED ORDER ATTACHED)

The Honorable Dan R. Slayton
Division 2

15 COMES NOW the State of Arizona, by and through the undersigned deputy, and
16 hereby respectfully moves this Court, pursuant to Rule 13.5(b) of the Arizona Rules of
17 Criminal Procedure, to order the amendment of the Direct Complaint to reflect the correct
18 string cite. Specifically, the State moves to amend Count 1 of the Direct Complaint,
19 changing the first reference in the string cite to "A.R.S. §§13-1104(A)." Defense counsel,
20 Adam Zickerman has been contacted and has no objection to the Motion to Amend the
21 Direct Complaint.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 Rule 13.5(b) of the Arizona Rules of Criminal Procedure provides that a complaint
24 may be amended to "correct mistakes of fact or remedy formal or technical defects." Ariz.
25 R. Crim. P. 13.5(b). A defect is considered formal or technical "when its amendment does
26 not operate to change the nature of the offense charged or to prejudice the defendant in
any way." *State v. Bruce*, 125 Ariz. 421, 423 (1980). "If the answer to both [of the

1 proceeding conditions] is in the negative, then the amendment passes Sixth Amendment
2 scrutiny and qualifies as a merely formal or technical amendment.” *State v. Sanders*, 205
3 Ariz. 208, 214 ¶ 19 (App. 2003) (overruled on other grounds). Examples of permissible
4 amendments include changing one digit in the serial number of a television set in a
5 prosecution for receiving stolen property, *State v. Butler*, 9 Ariz. App. 162, 165 (1969);
6 changing a corporate name from “National Hospitalization, Inc.” to “National Hospital Plan
7 Insurance Agency,” *State v. Barber*, 133 Ariz. 572, 577 (App. 1982); or changing the date
8 of the offense by one day, *Bruce*, 125 Ariz. at 423. “The common theme in these cases
9 is that the defect is minor and correcting it does no harm to the defendant’s ability to
10 defend himself.” *Sanders*, 205 Ariz. at 214 ¶ 19.

11 Here, the State is amending the Direct Complaint to strike the reference in Count
12 1 to “A.R.S. §§ 13-1104(A)(3),” substituting it with “A.R.S. §§ 13-1104(A).” This will bring
13 the statute into correspondence with the preceding language in Count 1, “without
14 premeditation, intending or knowing that his conduct would cause death, or under
15 circumstances manifesting extreme indifference to human life, recklessly engaged in
16 conduct which created a grave risk of death, and thereby caused the death of PETER
17 ARTHUR GILLESPIE.” This is a correction of a minor typographical error. It does not
18 change the nature of the offense charged and it does not harm the defendant’s ability to
19 defend himself.

20 The State accordingly moves for this amendment to the Direct Complaint. The
21 Amended Complaint and corresponding order are attached.
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RESPECTFULLY SUBMITTED this _____ day of December, 2017.

WILLIAM P. RING
COCONINO COUNTY ATTORNEY

By Bryan Shea
Bryan Shea
Deputy County Attorney

COPY of the foregoing
mailed/delivered this
7th day of December, 2017,
to:

The Honorable Dan R. Slayton
Division 2
Coconino County Courthouse
Flagstaff, AZ 86001

Adam Zickerman
3 N Leroux St, Ste 200
Flagstaff, AZ 86001

By: Bonnie Felsch